

## § 26.23

withdrawal or amendment of the admission. Admissions obtained pursuant to this procedure may be used in evidence only for the purposes of the pending action. The use of obtained admissions as evidence is permitted to the same extent and subject to the same objections as other evidence.

### HEARINGS

#### § 26.23 Public nature and timing of hearings; transcripts.

(a) *Public hearings.* All hearings in adjudicative proceedings shall be public.

(b) *Conduct of hearing.* Hearings shall proceed with all reasonable speed. The hearing officer may order recesses for good cause, stated on the record. The hearing officer may, for convenience of the parties or witnesses, or in the interests of justice, order that hearings be conducted outside of Washington, DC, and, if necessary, in more than one location.

(c) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter designated by the Department under the supervision of the hearing officer. The original transcript shall be a part of the record and shall constitute the sole official transcript. Any party or a member of the public, at his own expense, may obtain copies of transcripts from the reporter.

#### § 26.24 Rules of evidence.

(a) *Evidence.* Every party shall have the right to present its case or defense by oral and documentary evidence, unless otherwise limited by law or regulation, to conduct such cross-examination and to submit rebuttal evidence as may be required for a full and true disclosure of the facts. Irrelevant, immaterial, privileged, or unduly repetitious evidence shall be excluded. Unless otherwise provided for in this part, the Federal Rules of Evidence shall provide guidance to the hearing officer in the conduct of proceedings under this part, but shall not be binding. Parties may object to clearly irrelevant material, but technical and hearsay objections to testimony as used in a court of law will not be sustained.

(b) *Testimony under oath or affirmation.* All witnesses shall testify under oath or affirmation.

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(c) *Objections.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections. Rulings on objections shall be a part of the transcript. Failure to object to admission or exclusion of evidence or to any evidentiary ruling shall be considered a waiver of objection, but no exception to a ruling on an objection is necessary in order to preserve it for appeal.

(d) *Authenticity of documents.* Unless specifically challenged, it shall be presumed that all relevant documents are authentic. An objection to the authenticity of a document shall not be sustained merely on the basis that it is not the original.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact. Stipulations may be received in evidence at a hearing, and when received shall be binding on the parties with respect to the matters stipulated. The parties are encouraged to enter into stipulations of fact whenever possible.

(f) *Official notice.* All matters officially noticed by the hearing officer shall appear on the record.

(g) *Burden of proof.* The burden of proof shall be upon the proponent of an action or affirmative defense, including, where applicable, mitigating factors, unless otherwise provided by law or regulation.

#### § 26.25 Hearing officer's determination and order.

(a) *Scope of review.* The hearing officer shall conduct a de novo review of the administrative action to determine whether it is supported by a preponderance of the evidence, unless a different standard of proof is required by law or regulation. Each and every charge alleged by the Department need not be proven to support the administrative action. The hearing officer may modify or vacate the administrative action under review only upon a particularized finding of facts that justifies a deviation from the administrative action.

(b) *Closing of hearing.* At the discretion of the hearing officer, the closing of the record may be postponed in order to permit the admission of other evidence into the record. In the event further evidence is admitted, each